

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

LAURA D. CATES-WYLES

PLAINTIFF

V.

NO. 4:06CV01514 SWW/JTR

MICHAEL J. ASTRUE,
Commissioner, Social
Security Administration

DEFENDANT

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

INSTRUCTIONS

This recommended disposition has been submitted to United States District Judge Susan Webber Wright. The parties may file specific written objections to these findings and recommendations and must provide the factual or legal basis for each objection. An original and one copy of the objections must be filed with the Clerk no later than eleven (11) days from the date of the findings and recommendations. A copy must be served on the opposing party. The District Judge, even in the absence of objections, may reject these findings and recommendations in whole or in part.

RECOMMENDED DISPOSITION

Pending before the Court is Plaintiff's Motion for Attorney's Fees Pursuant to the Equal Access to Justice Act ("EAJA") and Brief in Support (docket entries #18 and #19). Defendant has filed a Response (docket entry #21), and the matter has been referred to this Court for recommended disposition (docket entry #20). For the reasons set forth herein, the Court recommends that the Motion be granted.

On October 13, 2006, Plaintiff filed this action challenging the decision of an Administrative Law Judge (“ALJ”) denying her social security benefits (docket entry #2). On February 27, 2008, the Court entered an Order and Judgment (docket entries #16 and #17) that remanded the case to the ALJ pursuant to sentence four of 42 U.S.C. § 405(g) and *Melkonyan v. Sullivan*, 501 U.S. 89 (1991).

On April 28, 2008, Plaintiff’s attorney, Mr. Alan J. Nussbaum, filed a Motion for Attorney’s Fees Pursuant to the EAJA. In this Motion, Mr. Nussbaum seeks payment for 28.50 hours of work performed by him at the hourly rate of \$125.00 (\$3,562.50). The Commissioner does not object to Plaintiff’s request for an award of attorney’s fees under the EAJA and asserts that he has no objection to the amount requested by Plaintiff’s attorney (docket entry #21).

Under the EAJA, a prevailing social security claimant is entitled to an award of reasonable attorney’s fees unless the Commissioner’s position in denying benefits was “substantially justified” or special circumstances make an award unjust. 28 U.S.C. § 2412(d)(1)(A). A claimant who wins a sentence four remand order, such as the one entered in this case (docket entry #16), is a prevailing party entitled to EAJA fees. *See Shalala v. Schaefer*, 509 U.S. 292, 302 (1993).

Under these circumstances, the Court concludes that Plaintiff is entitled to an award of attorney’s fees under the EAJA and that the amount requested by Plaintiff’s attorney is reasonable. Accordingly, the Court recommends that Plaintiff’s attorney receive a total award of \$3,562.50.

IT IS THEREFORE RECOMMENDED that Plaintiff’s Motion for Attorney’s Fees Pursuant to the EAJA (docket entry #18) be GRANTED.

IT IS FURTHER RECOMMENDED that the Commissioner certify and pay to Mr. Alan J. Nussbaum, attorney for Plaintiff, \$3,562.50 as attorney’s fees, pursuant to the EAJA.

DATED this 6th day of June, 2008.


UNITED STATES MAGISTRATE JUDGE